

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

JOSEPH L. JAMES

CIVIL ACTION NO:

VERSUS

JUDGE

BYRD MEMORIAL HOSPITAL, *ET AL.*

MAGISTRATE JUDGE

NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT

**TO: THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA:**

NOW INTO COURT, comes the United States of America, by and through Alexander C. Van Hook, Acting United States Attorney for the Western District of Louisiana, and Jennifer B. Frederick, Assistant United States Attorney, and pursuant to Title 28 United States Code § 1346 and Title 28 United States Code §§ 1441(a), *et seq.*, hereby files this Notice of Removal respectfully representing as follows:

1.

This action was commenced on or about July 7, 2013, by the filing of a Petition for Damages in Medical Malpractice styled *Joseph L. James vs. Byrd Memorial Hospital, et al.*, in the 30th Judicial District Court, Parish of Vernon, State of Louisiana, bearing Docket No. 93303 B.

2.

The above described action is a civil action which involves the interests of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, is a limited waiver of sovereign immunity and the exclusive remedy for negligent or wrongful acts or omissions of federal employees. The FTCA is thus the basis for medical malpractice claims

against government physicians, whether they are members of the uniformed services or civil service employees.

3.

The Federally Supported Health Centers Assistance Act (FSHCAA or the Act), 42 U.S.C. § 233(g)-(n), was originally enacted in 1992 and amended in 1995 in response to steadily increasing medical malpractice insurance costs that were having an adverse impact on the ability of HHS grantees to furnish primary health care services to medically underserved populations. H. Rep. No. 104-398 at 4, reprinted at 1996 U.S.C.C.A.N. 769. To remedy this situation, the FSHCAA provides that in certain cases HHS grantees and their employees and specified contractors are "deemed" to be employees of the Public Health Service. 42 U.S.C. § 233(g)(1)(A). Courts do not inquire into the sufficiency of the deeming process. *E.g., Brown v. Health Service, Inc.*, 971 F. Supp. 518, 521 (M.D. Ala. 1997). According to the Act, "The remedy against the United States [for actions of a deemed entity and its employees and covered contractors] shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a) of this section." *Id.* Subsection (a) states that the FTCA is the exclusive remedy for "damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions" by Public Health Service employees acting within the scope of employment. 42 U.S.C. § 233(a). Consequently, one wishing to pursue a malpractice suit against a deemed health center, or its employees or covered contractors, must comply with the terms of the FTCA, including its stringent exhaustion requirements.

4.

The plaintiff alleges medical malpractice by Outpatient Medical Center, Inc., at Leesville (incorrectly identified in the complaint as Louisiana Outpatient Clinic in Leesville) and Dr. Robert

Lamme (incorrectly identified as Robert Lemme), a contractor of the Outpatient Medical Center. The Secretary of Health and Human Services **deemed** Outpatient Medical Center eligible for FTCA coverage on January 1, 2014, January 1, 2015, January 1, 2016 and January 1, 2017. Dr. Robert Lamme was an employee of Byrd Memorial Hospital and a contractor for Outpatient Medical Center, Inc. at the time of the alleged negligence. Dr. Lamme has been dismissed from the above referenced complaint and the Defendant has not determined Dr. Lamme's FTCA eligibility in this matter.

5.

On the basis of the foregoing, the United States of America seeks to remove the above captioned action to **United States District Court for the Western District of Louisiana, Lake Charles Division**, pursuant to 28 U.S.C. § 1441(a).

6.

Copies of a Supplemental Citation and Amended Petition for Damages are attached hereto as Exhibit A. Neither the Supplemental Citation nor the Amended Petition for Damages has been served upon the Attorney General or the United States Attorney for the Western District of Louisiana. Therefore, this removal is timely made. 28 U.S.C. § 1446(b).

7.

The interests of the United States of America and its agency are involved in this action.

8.

On the basis of the foregoing, the United States of America seeks to remove the above captioned action to the United States District Court for the Western District of Louisiana, Lake Charles Division, pursuant to 28 U.S.C. §§ 1441(a) and 1442.

WHEREFORE, the United States of America requests suit number 93303 "B", entitled *Joseph L. James v. Byrd Memorial Hospital, et al.*, presently pending in the 30th Judicial District

Court, Parish of Vernon, State of Louisiana, **BE DEEMED REMOVED** to the United States District Court for the Western District of Louisiana, with the filing of this Notice of Removal.

Respectfully submitted,

ALEXANDER C. VAN HOOK
Acting United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 15, 2017, a copy of the foregoing Notice of Removal of Civil Action from State Court was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I have mailed by United States Postal Service this filing to Joseph L. James, pro se:

Joseph L. James
147 J and J Lane
Leesville, LA 71446

Joseph L. James
P. O. Box 649
Leesville, LA 71446

s/Jennifer B. Frederick
JENNIFER B. FREDERICK (#23633)
Assistant United States Attorney